



EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

RECEIVED

FEB 15 2005

Federal Communications Commission
Office of the Secretary

DOCKET FILE CCNY ORIGINAL

The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the Notice of Inquiry 04-247 in the matter of the effect of foreign mobile termination rates on U.S. Customers, released by the Federal Communications Commission ("FCC") on October 26, 2004 (hereafter, "the Notice"), on which the FCC has solicited comments in IB Docket No. 04-398.

The European Union already had the opportunity to comment on some of the issues raised in this Notice in its Note Verbale of 13 February 2003 concerning the FCC's Notice of Proposed Rulemaking 02-285, followed on 4 March 2004 by a letter addressed by former Commissioner Erkki Liikanen to all FCC members.

Once more, the European Commission respectfully requests the Federal Communications Commission not to address termination rates in foreign mobile networks in a unilateral manner.

As recalled in previous comments, the European Union ("EU") attaches great importance to the creation of competitive markets in the telecommunications sector both within and outside its borders. This being said, the liberalization and the establishment of pro-competitive regulatory frameworks must be achieved not by unilateral actions but through negotiation, primarily in the multilateral framework of the WTO, and through a policy of assistance towards those countries willing to reform their telecommunications regulatory environment, as exemplified by the international co-operation which takes place in the ITU. In this connection, issues such as payment methods and their effects on prices need to be discussed in the appropriate international bodies, such as the WTO.

Within the EU, a new European Regulatory Framework for electronic communications networks and services ("new Regulatory Framework") has empowered national regulatory authorities to address any lack of effective competition that they may identify. In this respect, the Notice does not reflect accurately such framework when it states that Directive

No. of Copies rec'd 0+1
List ABCDE

2002/21/EC "...limits the national regulatory authorities' ability to impose *ex ante* regulatory obligations on operators in markets where effective competition is slow to emerge and in markets where one or more operators possess significant market power".

As required by this new Regulatory Framework, the European Commission identified in February 2003¹ a minimum list of relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation that national regulatory authorities ("NRAs") should analyse. One of the markets identified in this Recommendation is the market for "voice call termination on individual mobile networks".

NRAs are responsible for determining whether these markets are effectively competitive or not under the supervision of the European Commission. Where an NRA concludes that a relevant market is not effectively competitive, it must impose appropriate regulatory obligations or alternatively maintain or amend existing obligations on undertakings with significant market power.

Relevant NRAs have already begun to notify to the European Commission their initial market definitions and assessments of market power, as well as their proposed remedies. By 20 January 2005, 10 NRAs had notified their findings concerning the market for voice call termination on individual mobile networks to the European Commission (see Annex I). So far all of them have designated all terminating operators as having significant market power and have imposed remedies on them, adapted to the specificities of the situation in each Member State. Among these remedies, price control plays a key role. Sometimes a glide path is considered necessary i.a. to implement new cost-accounting methods, such as LRIC.

The trend in mobile termination rates in the EU shows the effective results of regulatory intervention by European NRAs and the commitments taken by mobile operators in some Member States. In this respect, the European Commission's Communication of 2004 on

¹ Commission Recommendation of 11/02/2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (OJ L 114, 5 8.5.2003, p. 45).

European Electronic Communications Regulation and Markets² shows further reductions in mobile termination rates during last year (see Annex II). Such reductions are expected to be reflected in the mobile settlement rates which are directly negotiated by the EU-US carriers.

The European Commission is committed to achieve a timely and consistent application in all EU Member States of the new Regulatory Framework and has urged all NRAs to complete their analyses of the market for call termination on individual mobile networks as quickly as possible.

The Delegation of the European Commission would be grateful for the views of the Department of State, and requests that this *Note Verbale* be transmitted to the Federal Communications Commission so that it can be part of the proceedings in this matter and put in the public record.

The Delegation of the European Commission avails itself of the opportunity to renew to the Department of State the assurance of its highest consideration.



Washington,

14 February 2005

² Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, European Electronic Communications Regulation and Markets 2004.
(http://europa.eu.int/information_society/topics/ecom/comm/all_about/implementation_enforcement/annualreports/10threport/index_en.htm)

Annex I

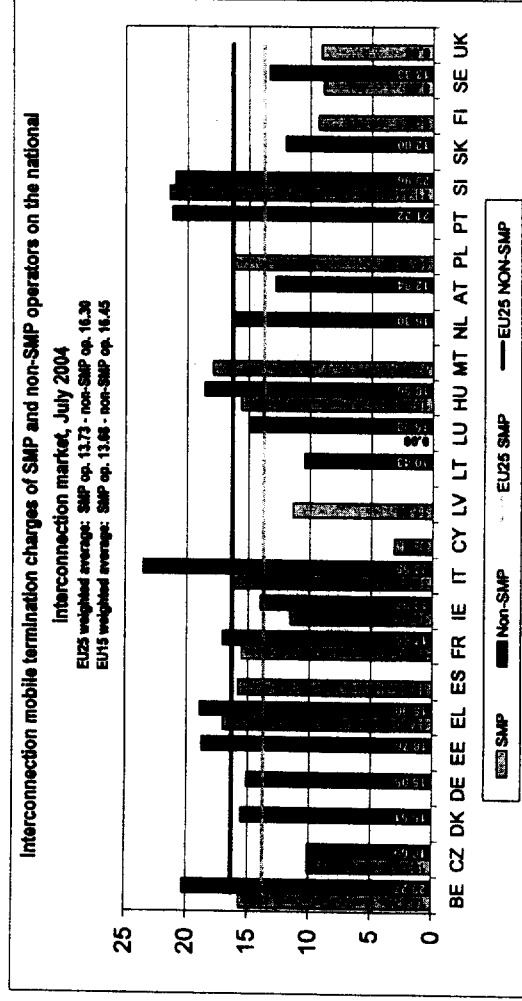
Market 16: Voice call termination on individual mobile networks Notifications assessed by the Commission Situation as of 15 January 2004

NRA	Notification number*
TKK/RTR (Austria)	AT/2004/0099
Ficora (Finland)	FI/2003/0031
ART (France)	FR/2004/0120 and FR/2004/0104
EETT (Greece)	EL/2004/0078
NHH (Hungary)	HU/2004/0101
ComReg (Ireland)	IE/2004/0073
ANACOM (Portugal)	PT/2004/0129
TOSR (Slovak Republic)	SK/2005/0136
PTS (Sweden)	SE/2004/0052
Ofcom (United Kingdom)	UK/2003/0040

*The text of all these notifications and related Decisions adopted by the European Commission are publicly available at CIRCA in the library of the eCCTF - e-Communications Consultation Task Force

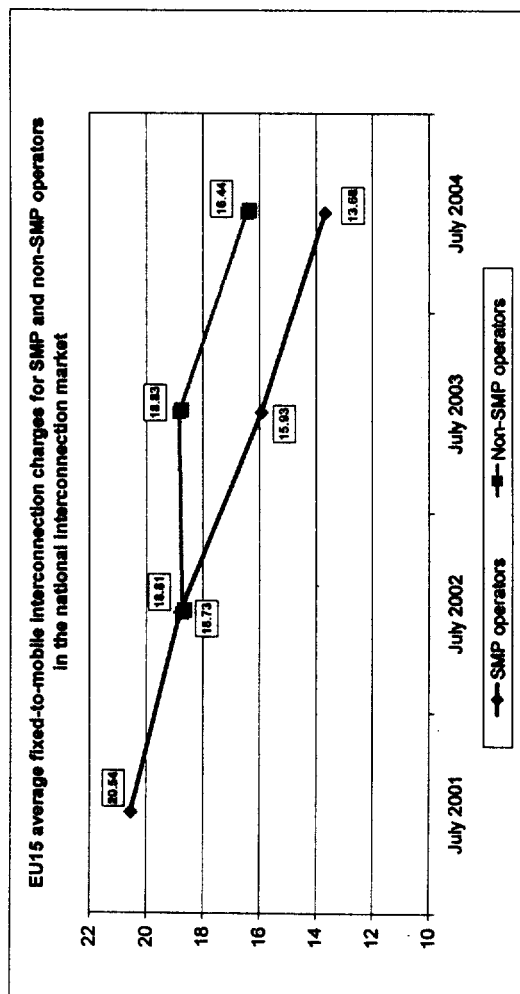
(<http://forum.europa.eu.int/Public/irc/infso/ecctf/library>)

European Electronic Communications Regulation and Markets 2004
Selected Data on interconnection mobile termination charges



Source: Source: Commission services based on NRA data .
(http://europa.eu.int/information_society/topics/ecomm/doc/all_about/implementation_enforcement/annualreports/10threport/sec2004153VOL1en.pdf)

Annex II
European Electronic Communications Regulation and Markets 2004
Selected Data on interconnection mobile termination charges



Source: Source: Commission services based on NRA data .
(http://europa.eu.int/information_society/topics/comm/doc/all_about/implementation_enforcement/annualreports/10threport/sec2004153SVOL1en.pdf)